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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WILLIAM JAMES FOSTH and
COLLETTE D. PUTNAM,

Plaintiffs,

v.

OWNIT MORTGAGE SOLUTIONS,
INC., et al.,

Defendants.

2:09-CV-642 JCM (LRL)

ORDER

Presently before the court is defendant National Default Servicing Corporation's motion to dismiss (Doc. #18), filed on August 18, 2009. To date plaintiffs have not filed an opposition.

While the failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion under LR 7-2(d), plaintiffs' failure to file an opposition is an insufficient ground for dismissal. *See Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Before dismissing a case, a district court is required to weigh several factors, including: 1) the public's interest in the expeditious resolution of litigation, 2) the court's need to manage its docket, 3) the risk of prejudice to the defendants, 4) the public policy favoring disposition of cases on their merits, and 5) the availability of less dramatic sanctions. *Id.*

Here, these factors weigh in favor of dismissing plaintiffs' case against defendant National Default Servicing Corporation without prejudice. Plaintiffs filed their complaint in state court on March 10, 2009. The case was removed to federal court on April 9, 2009. Plaintiffs have been

1 served with defendant's motion, yet they failed to respond. Indeed, the last document plaintiffs filed
2 was a suggestion of bankruptcy (Doc. #20) on September 17, 2009. The need for the expeditious
3 resolution of cases on the court's docket is strong. Further, defendant has an interest in resolving
4 this issue in a timely manner. Although public policy favors a resolution on the merits, there is no
5 evidence that plaintiffs intend to continue litigating this case against this defendant.

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant's motion to
8 dismiss (Doc. #18) be, and the same hereby is, GRANTED. Defendant National Default Servicing
9 Corporation is hereby dismissed from this action without prejudice.

10 DATED this 25th day of January, 2010.

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13 UNITED STATES DISTRICT JUDGE